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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/765,704   | 01/26/2004  | Mark E. Ainsworth    | PREC122226          | 9275             |
| 26380 7590 06/23/2008<br>CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC<br>1420 FIFTH AVENUE<br>SUITE 2800<br>SEATTLE, WA 98101-2347 |             |                      |                     |                  |
| EXAMINER<br>RICHMAN, GLENNE  |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 3764   |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/765,704

**Applicant(s)**

AINSWORTH ET AL.

**Examiner**

/Glenn Richman/

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16, 18-36 and 38-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 18-36 and 38-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 18-21, 35, 36, 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oglesby et al in view of Virtual Support.

Oglesby et al disclose gathering service information from at least one fitness equipment unit (abstract).

Oglesby et al do not disclose using a control server to gather the information.

Virtual Support disclose using a control server to communicate information (par. 5).

It would have been obvious to use Virtual Support's server with Oglesby's device, as it is well known as taught by Virtual Support, to use a server for communicating exercise data.

Virtual Support further discloses the servers are used with a wireless connection (par. 4).

Oglesby et al further disclose determining whether the service information gathered in step (a) is significant (abstract); and (c) automatically sending a service alert message to at least one predefined recipient regarding service information that is significant (abstract), sending a service alert is accomplished automatically (col. 1, lines

65 – et seq.), sending a service alert is accomplished only when requested by at least one recipient (col. 1, lines 65 – et seq.), using the control server to gather service information includes storing the service information in a database associated with the control server (abstract), the service information is considered significant if the fitness equipment unit requires servicing (abstract).

Virtual Support discloses the service information is sent by the control server and the control server gathers real time service information par. 5., requesting service information from a control server having a temporary database; the request including instructions defining what types of service information are to be obtained; and receiving a service report from the control server according to the instructions par. 4 – et seq., the service information is real time service information par. 4 – et seq., the fitness facility is one of a plurality of fitness facilities of an association and wherein the at least one predefined recipient is a main office of the association par. 4 – et seq., the at least one predefined recipient is a manufacturer of the at least one fitness equipment par. 4 – et seq., the at least one predefined recipient is a service/maintenance provider remote from the fitness facility par. 4 – et seq., sending service information from the control server at the fitness facility to an accumulated data storage unit; and sending service information from a second control server at a second fitness facility remote from the first fitness facility to the accumulated data storage unit par. 4 – et seq., the service information sent from the second control server at the second fitness facility is real-time data and is continuously sent par. 4 – et seq., the at least one predefined recipient

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comprises a repair facility and wherein the service alert message includes a request for a replacement part for the at least one exercise equipment par. 1 – et seq.

Claims 22-34, 44, 45, 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oglesby et al and Virtual Support in view of Shea.

Oglesby et al do not disclose using an accumulated data storage unit to store history service information; the history service information being formed by the periodic collection of the real time service information.

Shea disclose using an accumulated data storage unit to store history service information; the history service information being formed by the periodic collection of the real time service information "The exercise terminal maintenance data may include, but is not limited to, data regarding previous maintenance checks (maintenance check dates, maintenance tests performed, problems fixed, etc.) and a schedule for future maintenance checks. The exercise terminal use data may include, but is not limited to, a count of the number of times the terminal has been used. Such terminal use data can provide valuable information to health club operators as to which exercise terminals are popular with exercisers and which are not. The use data may also be utilized in the determination, either automatically by the system control program or by the

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system administrator, of a schedule for future maintenance checks."

It would have been obvious to use Shea's history service information with Oglesby's device, as it is well known in the art as taught by Shea, to accumulate a service history, for providing data for future servicing.

As for claims 23-25, 31-36, 44, 45, 47-50 Shea further discloses determining whether the real time service information is significant includes obtaining and evaluating the history service information. "The exercise terminal maintenance data may include, but is not limited to, data regarding previous maintenance checks (maintenance check dates, maintenance tests performed, problems fixed, etc.) and a schedule for future maintenance checks. The exercise terminal use data may include, but is not limited to, a count of the number of times the terminal has been used. Such terminal use data can provide valuable information to health club operators as to which exercise terminals are popular with exercisers and which are not. The use data may also be utilized in the determination, either automatically by the system control program or by the system administrator, of a schedule for future maintenance checks.", sending a service alert message includes sending from the control server the real time service information and sending from the accumulated storage unit the history service information "The exercise terminal maintenance data may

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include, but is not limited to, data regarding previous maintenance checks (maintenance check dates, maintenance tests performed, problems fixed, etc.) and a schedule for future maintenance checks. The exercise terminal use data may include, but is not limited to, a count of the number of times the terminal has been used. Such terminal use data can provide valuable information to health club operators as to which exercise terminals are popular with exercisers and which are not. The use data may also be utilized in the determination, either automatically by the system control program or by the system administrator, of a schedule for future maintenance checks.", sending a service alert message includes sending from the control server both the real time service information and the history service information "The exercise terminal maintenance data may include, but is not limited to, data regarding previous maintenance checks (maintenance check dates, maintenance tests performed, problems fixed, etc.) and a schedule for future maintenance checks. The exercise terminal use data may include, but is not limited to, a count of the number of times the terminal has been used. Such terminal use data can provide valuable information to health club operators as to which exercise terminals are popular with exercisers and which are not. The use data may also be utilized in the determination, either automatically by the system control

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program or by the system administrator, of a schedule for future maintenance checks.”.

As for claim 26, given Oglesby's service information, and Shea's history information, it is obvious a service alert would be sent for both.

As Shea discloses a wireless connection (col. 5, lines 3 - et seq.), it is obvious that the history service information could formed from the periodic collection of real time service information via a wireless connection, the control server, or the accumulated data storage unit.

Virtual Support further disclose the service report includes service information on a plurality of fitness equipment units par. 4 – et set, the plurality of fitness equipment units are located at a plurality of distinct fitness facilities par. 1 – et set., 46.

Claims 46 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oglesby et al and Virtual Support in view of Shea.

Oglesby do not disclose the service report includes information concerning usage of at least one fitness equipment unit during hours of a day, identifying peak hours of usage.

Brown et al disclose report includes information concerning usage of at least one fitness equipment unit during hours of a day, identifying peak hours of usage

“ Reservation server 80 preferably tracks statistical data concerning the times utilized and frequency of reservation requests for exercise machines. By tracking reservation data, marketing and financial planning data can be collected. For



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example, peak hours for a health club can be determined. In addition, by tracking reservation data, a member might be limited in the number of times that they can schedule a reservation and later cancel the reservation.”.

It would have been obvious to use Brown's reports with Oglesby, as it is well known as taught by Brown, to monitor the use of exercise equipment, to determine the hours it is used.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/  
Primary Examiner  
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